12, 17, 56 N. E. 502, 504. But an exception has been made when the repetition is privileged. *Derry* v. *Handley*, 16 L. T. (N. S.) 263. In the principal case the court makes another exception on the ground that the words are here actionable *per se*. The jury, which can assess general damages, will, as a matter of fact, doubtless take these repetitions into consideration. But by authority, any instruction to that effect is error. *Hastings* v. *Stetson*, 126 Mass. 329; *Prime* v. *Eastwood*, 45 Ia. 640. See NEWELL, SLANDER AND LIBEL, 3 ed., § 1079. Now the established general rule rests on an obsolescent principle of causation. See 27 HARV. L. REV. 389. But the fact that the law considers the slander actionable *per se* can certainly not effect such causation. It is therefore difficult to justify this distinction. The decision, however, is desirable in placing a further limitation upon a rule which is without basis of reason. For it is highly foreseeable that slanderous remarks will be repeated, and it is just this repetition which is responsible for the main injury in defamation. See *Davis* v. *Starrett*, 97 Me. 568, 576, 55 Atl. 516, 519.

LIBEL AND SLANDER — PUBLICATION — BY OFFICER OF CORPORATION TO AGENT. — A letter, defamatory of plaintiff, was dictated by an officer of a corporation to his stenographer and sent to a fellow-employee. Each was acting in the prosecution of the business of the corporation. *Held*, that this did not constitute a publication of a libel. *Central of Georgia Ry. Co.* v. *Jones*, 89 S. E. 429 (Ga.).

It has been held that dictation to a stenographer by an officer of a corporation is not a publication. *Owen* v. *Ogilvie Pub. Co.*, 32 App. Div. 465, 53 N. Y. Supp. 1033. See 12 HARV. L. REV. 355. The principal case applies the same principle to communications between any fellow-employees. These cases argue that, as a corporation is an entity, acting only through agents, a communication by one agent to another is merely a communication by the corporation to itself; that the agents are merely parts of the deliberative machinery of the corporation, as distinguished from their identity as individuals. But such a distinction seems neither desirable nor true to fact. See 27 HARV. L. REV. 284. It seems impossible, as a matter of practice, to dissociate the individual from the employee. Agents do form personal opinions and act upon them. The danger to the community of licensing such communications, which in the case of a large concern might well become widespread, seems to outweigh the consideration that the corporation would otherwise be seriously hampered in the transaction of its business. If the communications are necessary and reasonable, as in the principal case, the defense of privilege is available. *Lawless* v. *Anglo-Egyptian Cotton & Oil Co.*, L. R. 4 Q. B. 262; *Edmondson* v. *Birch & Co.*, [1907] 1 K. B. 371, 380.

MUNICIPAL CORPORATIONS — ABUTTING OWNERS — EASEMENTS. — Adjoining the plaintiff's property the city erected a public bathhouse with projections upon the sidewalk which violated the city charter and a city ordinance. The plaintiff applies for a mandatory injunction requiring the city to remove the encroachments. *Held*, that the injunction be granted. *Hellinger* v. *City of New York*, 95 Misc. 394.

It is generally held that an abutter has a property right in the air, light, and access afforded by the street, which cannot be taken without compensation. *Story* v. *N. Y. etc. R. Co.*, 90 N. Y. 122; *Abendroth* v. *Manhattan Ry. Co.*, 122 N. Y. 1, 25 N. E. 496; *De Geofroy* v. *Merchants, etc. Ry. Co.*, 179 Mo. 698, 79 S. W. 386. See 1 LEWIS, EMINENT DOMAIN, 3 ed., § 123. Encroachments on the sidewalk which materially touch this right will be enjoined, and an ordinance permitting such cannot be supported. *McMillan* v. *Klaw & Erlanger Const. Co.*, 107 App. Div. 407, 95 N. Y. Supp. 365. In most cases the offenders have been private individuals. It seems however not improper to

enforce the same rule against the city. There are undoubtedly some things that a city may not do within its streets. *Lutterloh* v. *Mayor, etc. of Cedar Keys*, 15 Fla. 306; *Morrison* v. *Hinkson*, 87 Ill. 587; *Dubuque* v. *Maloney*, 9 Iowa 450. When the city is improving roads or building bridges, courts go very far to find its action privileged as an exercise of governmental function. *Callendar* v. *Marsh*, 1 Pick. (Mass.) 418; *Selden* v. *City of Jacksonville*, 28 Fla. 558, 10 So. 457; *Sauer* v. *New York*, 180 N. Y. 27, 72 N. E. 579. But arguments of that sort hardly apply to an encroachment by a public bath.

RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO USE OF PROPERTY — ACCRETIONS TO SERVIENT TENEMENT. — The owner of a large tract of land lying between bay and ocean divided it into building lots. He agreed with the buyers of lots that a certain strip running through the center of the tract from bay to ocean should be kept forever open. Extensive accretions formed at the ocean extremity of this open area. *Held*, that the accretions were subject to the restrictions binding the original strip. *Bridgewater* v. *Ocean City Ass'n*, 96 Atl. 905 (N. J.).

It is a familiar rule of construction of grants that the designation of navigable water as a boundary imports the shifting high-water line thereof. *Mulry* v. *Norton*, 100 N. Y. 424, 3 N. E. 581. This rule has been likewise applied to a street easement acquired by condemnation proceedings. See 22 HARV. L. REV. 610. The correctness of its application in the principal case can hardly be questioned. The same result, however, might have been reached by regarding the accretions as assimilated by or drowned in the original tract, and therefore subject to its burdens. This conception is amply supported by precedent. For example, the adverse occupancy of shore land for the statutory period carries with it title to accretions, though the latter may have but recently formed. See *Campbell* v. *The Laclede Gas Light Co.*, 84 Mo. 352, 372. Similarly if the tract is mortgaged, the accretions are subject to the mortgage lien. *Cruikshanks* v. *Wilmer*, 93 Ky. 19, 18 S. W. 1018. The same is likewise true in the case of dower. *Lombard* v. *Kinzie*, 73 Ill. 446. The rule is also followed where the land is subject to a lease. *Cobb* v. *Lavalle*, 89 Ill. 331.

RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO THE USE OF PROPERTY — EMINENT DOMAIN — COMPENSATION TO OWNER OF BENEFITED LAND WHEN RESTRICTED LAND IS CONDEMNED. — The plaintiff owned lots which were within a tract of restricted building lots, the deeds to which provided that no structure for business purposes should be erected on any of these lots. The defendant railway company acquired lots equitably servient to those of the plaintiff and built its tracks thereon. The plaintiff seeks compensation. *Held*, that the plaintiff may recover. *Flynn* v. *New York, Westchester & Boston Ry. Co.*, 112 N. E. 913 (N. Y.).

In two similar cases *held*, that the plaintiff may not recover. *Ward* v. *Cleveland Ry. Co.*, 92 Ohio St. 471, 112 N. E. 507; *Doan* v. *Cleveland Short Line Ry. Co.*, 92 Ohio St. 461, 112 N. E. 505.

The question whether an equitable servitude is a contract right or a right *in rem* has been a matter chiefly of theoretical dispute. See 21 HARV. L. REV. 139. In the principal cases the question has become of practical importance. By adopting different theories the courts have reached different results. It seems doubtful, however, whether even here different conclusions are necessary. The two Ohio cases hold, going on the contract theory, that a restrictive covenant creates no rights effective as against the powers of eminent domain. The basis of such decision is public policy: otherwise property owners could by contracting among themselves defeat the rule that depreciation in value of neighboring property incidental to a public use does not constitute a "taking" so as to require compensation. See *United States* v. *Certain Lands*,